



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HENRI DUONG
316 1/2 E GLENDON WAY
ALHAMBRA CA 91801

COPY MAILED

MAR 12 2008

OFFICE OF PETITIONS

In re Application of :
Henri Duong :
Application No. 10/725,226 : LETTER
Filed: December 1, 2003 :
Title: Back Driving Automatic Brake :
System & Automatic Braking System :
for Equipping in all Vehicles,
Airplanes, Ships, Etc.

This is in response to applicant's paper filed January 25, 2008, titled "Request refund for the unused fees of Revival (unavoidably, unintentionally) and Notice of Appeal for application no. 10/725,226 filing date: 12/01/2003 Art Unit 3683 being abandoned".

The request for a refund is DISMISSED.

The above-identified application became abandoned for failure to timely file a **proper** reply to the final Office action mailed December 30, 2005. This Office action set a shortened statutory period for reply of three (3) months. Applicant filed a response on January 23, 2006, but by Advisory Action mailed February 14, 2006, the Examiner advised Applicant that the response would not be entered because it failed to place the application in condition for allowance. Applicant filed another response on February 17, 2006, but once again this reply failed to place the application in condition for allowance. No further reply with an extension of time under 37 CFR 1.136(a) having been received, the above-identified application became abandoned on March 31, 2006.

A Notice of Abandonment was mailed on August 7, 2006. Applicant filed a petition to withdraw the holding of abandonment on August 18, 2006, as well as a petition to revive under 37 CFR 1.137(a) on September 28, 2006. Both petitions were dismissed in a decision mailed on October 16, 2006. Applicant filed a renewed petition October 23, 2006. However, the petition was dismissed in a decision mailed on January 16, 2007. Applicant filed a petition to revive under 37 CFR 1.137(b) on January 30, 2007. However, this petition was dismissed in a decision mailed on March 26, 2007. The decision explained that while applicant paid the petition fee and made the proper statement of unintentional delay, applicant's Amendment failed to place the application in condition for allowance. Applicant was instructed on renewed petition to submit either an RCE, continuing application, or Notice of Appeal.

On April 11, 2007, applicant filed a Notice of Appeal, together with its required fee. However, applicant did not submit it with a renewed petition under 37 CFR 1.137(b). As such, the Notice of Appeal was not entered by the Office.

Applicant has now filed the instant request for a refund of the petition fees and Notice of Appeal fee.

37 CFR 1.26 states:

(a) The Commissioner may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph or in § 1.28(a). If the Office charges

a deposit account by an amount other than an amount specifically indicated in an authorization (§ 1.25(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.¹

Furthermore, MPEP 607.02 states:

When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is **not** a "fee paid by mistake" within the meaning of 35 U.S.C. 41(d).

37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will **not** entitle the party to a refund of such fee.²

Lastly, MPEP 711.03(c) states that:

[T]he petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

As can be seen from the above, refunding the petition fees and Notice of Appeal fee is not appropriate.

The application is currently abandoned. If applicant desires to revive the application pursuant to 37 CFR 1.137(b), applicant should submit a paper entitled "Renewed Petition Under 37 CFR 1.137(b)". No additional petition fee is required for a renewed petition.

¹ 37 CFR 1.26 (emphasis added).

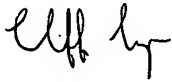
² MPEP 607.02 (emphasis added).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (571)273-8300
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo
Petitions Attorney
Office of Petitions